

SENATE BILL 3

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SB 674/02 - FIN

2003 Regular Session
3lr0358

(PRE-FILED)

By: **Senators Frosh, Hooper, and Ruben**
Requested: November 6, 2002
Introduced and read first time: January 8, 2003
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Telecommunications - Telephone Solicitations - Regulation**

3 FOR the purpose of requiring the Public Service Commission to create, maintain, and
4 update a database of residential telephone subscribers in the State who choose
5 not to receive telephone solicitations; authorizing the Commission to contract
6 with another entity to create and operate the database; requiring the database
7 to be in operation on or before a certain date; requiring the Commission to adopt
8 certain regulations relating to notice of the database, fees to be charged for use
9 of the database, access to the database, inclusion in the database, and other
10 matters; requiring a person who intends to engage in telephone solicitation to
11 purchase the updated version of the database for each client; prohibiting a
12 person who engages in telephone solicitation from soliciting or causing a
13 solicitation to a listed residential telephone subscriber; requiring the
14 Commission to make the database available to persons engaged in telephone
15 solicitation at a certain time; limiting the use of the information contained in the
16 database; authorizing certain legal action against a person engaged in telephone
17 solicitation for a violation of this Act and authorizing the recovery of certain
18 damages and fees; providing a limitation on legal action; providing for a certain
19 affirmative defense against a legal action; requiring the Commission to provide
20 certain information relating to the information in the database for inclusion in
21 any database established under federal law; providing that compliance with a
22 certain federal program be allowed to be deemed compliance with this Act under
23 certain circumstances; providing that a violation of this Act is an unfair and
24 deceptive trade practice and may be a violation of the State Credit Services
25 Businesses Act under certain circumstances; establishing certain penalties for
26 certain violations of this Act; providing for the application of this Act; providing
27 for certain exceptions to this Act; defining certain terms and redefining a certain
28 term; requiring that the Commission and the Office of the Attorney General
29 report on certain matters to certain committees of the General Assembly by
30 certain dates; and generally relating to telephone solicitations in the State.

31 BY repealing and reenacting, with amendments,
32 Article - Commercial Law
33 Section 14-2201 and 14-2202

1 Annotated Code of Maryland
2 (2000 Replacement Volume and 2002 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article - Commercial Law
5 Section 14-2203 and 14-2204
6 Annotated Code of Maryland
7 (2000 Replacement Volume and 2002 Supplement)

8 BY repealing
9 Article - Commercial Law
10 Section 14-2205
11 Annotated Code of Maryland
12 (2000 Replacement Volume and 2002 Supplement)

13 BY adding to
14 Article - Commercial Law
15 Section 14-2205 and 14-2206
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2002 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Commercial Law**

21 14-2201.

22 (a) In this subtitle the following words have the meanings indicated.

23 (B) "CHARITABLE ORGANIZATION" HAS THE MEANING STATED IN § 6-101 OF
24 THE BUSINESS REGULATION ARTICLE.

25 (C) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

26 [(b)] (D) "Consumer" means an actual or prospective purchaser, lessee, or
27 recipient of consumer goods, consumer services, or consumer realty.

28 [(c)] (E) (1) "Consumer goods", "consumer realty", and "consumer services"
29 mean, respectively, goods, real property, and services which are primarily for
30 personal, household, family, or agricultural purposes.

31 (2) (i) [Subject] IN §§ 14-2203 AND 14-2204 OF THIS SUBTITLE, AND
32 SUBJECT to subparagraph (ii) of this paragraph, "consumer services" does not include
33 financial services or securities sales.

1 (ii) "Consumer services" includes any solicitation offering credit
2 services where:

- 3 1. The consumer is required to call a telephone number;
- 4 2. The consumer is charged a separate toll fee for the call;
- 5 and
- 6 3. The person making the solicitation receives any portion of
7 the separate telephone toll fee paid by the consumer.

8 [(d)] (F) "Credit services" means providing or offering to provide any service in
9 return for the payment of money or other consideration, where the service is held out
10 to provide assistance to a consumer with regard to:

11 (1) Improving the consumer's credit history, credit rating, or credit
12 record; or

13 (2) Obtaining an extension of credit for the consumer.

14 (G) "DATABASE" MEANS A LIST CONSISTING SOLELY OF THE TELEPHONE
15 NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO
16 RECEIVE TELEPHONE SOLICITATIONS.

17 [(e)] (H) (1) "Merchant" means a person who, directly or indirectly, offers or
18 makes available to consumers any consumer goods, consumer services, or consumer
19 realty.

20 (2) "Merchant" does not include a person who is exempt under § 13-104
21 of this article.

22 (I) (1) "RESIDENTIAL SUBSCRIBER" MEANS:

23 (I) AN INDIVIDUAL WHO HAS SUBSCRIBED TO RESIDENTIAL
24 TELEPHONE SERVICE FROM A LOCAL EXCHANGE COMPANY;

25 (II) ANY INDIVIDUAL WHO RESIDES WITH THE SUBSCRIBER; OR

26 (III) AN INDIVIDUAL WHO HAS SUBSCRIBED TO WIRELESS
27 TELEPHONE SERVICE WITH A MARYLAND AREA CODE.

28 (2) "RESIDENTIAL SUBSCRIBER" DOES NOT INCLUDE A COMMERCIAL
29 SUBSCRIBER TO A TELEPHONE SERVICE.

30 [(f)] (J) "Telephone solicitation" means [the attempt by a merchant to sell or
31 lease consumer goods, services, or realty to a consumer located in this State that is:

32 (1) Made entirely by telephone; and

1 (2) Initiated by the merchant] ANY VOICE COMMUNICATION OVER A
2 TELEPHONE LINE FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR RENTAL
3 OF, OR INVESTMENT IN, PROPERTY, GOODS, OR SERVICES.

4 14-2202.

5 (a) [The provisions of this] SECTIONS 14-2203 AND 14-2204 OF THIS subtitle do
6 not apply to a transaction:

7 (1) Made in accordance with prior negotiations in the course of a visit by
8 the consumer to a merchant operating a retail business establishment which has a
9 fixed permanent location and where consumer goods are displayed or offered for sale
10 on a continuing basis;

11 (2) In which the person making the solicitation or the business
12 enterprise for which the person is calling:

13 (i) Has made a previous sale to the consumer; or

14 (ii) Has a preexisting business relationship with the consumer;

15 (3) Which is covered by the provisions of Subtitle 3 of this title;

16 (4) In which:

17 (i) The consumer may obtain a full refund for the return of
18 undamaged and unused goods to the seller within 7 days of receipt by the consumer;
19 and

20 (ii) The seller will process the refund within 30 days of receipt of
21 the returned merchandise by the consumer;

22 (5) In which the consumer purchases goods or services pursuant to an
23 examination of a television, radio, or print advertisement or a sample, brochure,
24 catalogue, or other mailing material of the merchant that contains:

25 (i) The name, address, and telephone number of the merchant;

26 (ii) A description of the goods or services being sold; and

27 (iii) Any limitations or restrictions that apply to the offer; or

28 (6) In which the merchant is a [bona fide] charitable organization [as
29 defined in § 6-101 of the Business Regulation Article].

30 (b) Notwithstanding subsection (a) of this section, this subtitle applies to any
31 solicitation offering credit services where:

32 (1) The consumer is required to call a telephone number;

33 (2) The consumer is charged a separate toll fee for the call; and

1 (3) The person making the solicitation receives any portion of the
2 separate telephone toll fee paid by the consumer.

3 14-2203.

4 (a) A contract made pursuant to a telephone solicitation is not valid and
5 enforceable against a consumer unless made in compliance with this subtitle.

6 (b) A contract made pursuant to a telephone solicitation:

7 (1) Shall be reduced to writing and signed by the consumer;

8 (2) Shall comply with all other applicable laws and regulations;

9 (3) Shall match the description of goods or services as that principally
10 used in the telephone solicitation;

11 (4) Shall contain the name, address, and telephone number of the seller,
12 the total price of the contract, and a detailed description of the goods or services being
13 sold;

14 (5) Shall contain, in at least 12 point type, immediately preceding the
15 signature, the following statement:

16 "You are not obligated to pay any money unless you sign this contract and return
17 it to the seller."; and

18 (6) May not exclude from its terms any oral or written representations
19 made by the merchant to the consumer in connection with the transaction.

20 14-2204.

21 A merchant engaging in a telephone solicitation may not make or submit any
22 charge to the consumer's credit account until after the merchant receives from the
23 consumer a copy of the contract which complies with this subtitle.

24 [14-2205.

25 In addition to any remedies otherwise available at law, a violation of this
26 subtitle shall be:

27 (1) An unfair and deceptive trade practice under Title 13, Subtitle 3 of
28 this article; and

29 (2) If the violation involves a solicitation offering credit services, a
30 violation of the Maryland Credit Services Businesses Act.]

31 14-2205.

32 (A) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A TELEPHONE
33 SOLICITATION THAT IS:

1 (1) MADE BY A PERSON TO A RESIDENTIAL SUBSCRIBER IF:

2 (I) THE PERSON IS RESPONDING TO AN EXPRESS, VERIFIABLE
3 REQUEST OR INQUIRY BY THE RESIDENTIAL SUBSCRIBER; OR

4 (II) THE RESIDENTIAL SUBSCRIBER GAVE PRIOR EXPRESS,
5 VERIFIABLE PERMISSION FOR THE PERSON TO MAKE THE TELEPHONE
6 SOLICITATION;

7 (2) MADE BY OR ON BEHALF OF A CHARITABLE ORGANIZATION;

8 (3) LIMITED TO SOLICITING THE EXPRESSION OF IDEAS, OPINIONS, OR
9 VOTES; OR

10 (4) MADE TO A BUSINESS.

11 (B) (1) (I) THE COMMISSION SHALL ESTABLISH AND PROVIDE FOR THE
12 CREATION AND OPERATION OF A DATABASE THAT CONSISTS SOLELY OF TELEPHONE
13 NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO
14 RECEIVE TELEPHONE SOLICITATIONS.

15 (II) THE COMMISSION SHALL UPDATE THE DATABASE EVERY 3
16 MONTHS.

17 (III) THE COMMISSION MAY CONTRACT WITH ANOTHER ENTITY
18 THAT SUBMITS A COMPETITIVE BID TO CREATE, OPERATE, AND UPDATE THE
19 DATABASE.

20 (2) FOR THE PURPOSES OF SUBSECTION (E) OF THIS SECTION, THE
21 COMMISSION SHALL MAKE EACH UPDATE TO THE DATABASE AVAILABLE TO
22 PERSONS ENGAGED IN TELEPHONE SOLICITATION AT A REASONABLE TIME PRIOR TO
23 THE EFFECTIVE DATE OF THE UPDATE.

24 (3) THE COMMISSION SHALL CREATE AND HAVE THE DATABASE IN
25 OPERATION ON OR BEFORE JANUARY 1, 2004.

26 (C) THE COMMISSION SHALL ADOPT REGULATIONS TO:

27 (1) SPECIFY THE METHODS BY WHICH RESIDENTIAL SUBSCRIBERS ARE
28 TO BE INFORMED OF THE OPPORTUNITY TO FILE A NOTICE WITH THE COMMISSION
29 REQUESTING THAT THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER BE
30 ADDED TO THE DATABASE, INCLUDING:

31 (I) REQUIRING EACH LOCAL EXCHANGE COMPANY AND WIRELESS
32 TELEPHONE SERVICE PROVIDER TO INFORM ITS RESIDENTIAL SUBSCRIBERS; AND

33 (II) USING PUBLIC SERVICE ANNOUNCEMENTS, MAILINGS, OR
34 OTHER MEANS;

1 (2) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER IS
2 TO BE INFORMED ABOUT THE TYPES OF CALLS THAT ARE EXEMPT FROM THIS
3 SECTION;

4 (3) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
5 WHO FILES A NOTICE IS INFORMED ABOUT THE EFFECTIVE DATE OF THE DATABASE
6 AND EACH UPDATE TO THE DATABASE THAT WILL CONTAIN THE RESIDENTIAL
7 SUBSCRIBER'S TELEPHONE NUMBER;

8 (4) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
9 MAY:

10 (I) FILE AN INITIAL NOTICE WITH THE COMMISSION THAT ADDS
11 THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER TO THE DATABASE; AND

12 (II) FILE A CANCELLATION NOTICE WITH THE COMMISSION THAT
13 DELETES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER FROM THE
14 DATABASE;

15 (5) WHERE A RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER
16 CHANGES, SPECIFY THE EFFECT THE CHANGE WILL HAVE ON THE RESIDENTIAL
17 SUBSCRIBER'S LISTING ON THE DATABASE;

18 (6) SPECIFY THE METHODS BY WHICH A PERSON INTENDING TO MAKE A
19 TELEPHONE SOLICITATION CAN OBTAIN ACCESS TO THE LATEST UPDATED VERSION
20 OF THE DATABASE;

21 (7) SPECIFY THE FEES THAT A PERSON MUST PAY TO THE COMMISSION
22 TO OBTAIN A COPY OF THE LATEST UPDATED VERSION OF THE DATABASE; AND

23 (8) SPECIFY OTHER MATTERS RELATING TO THE DATABASE THAT THE
24 COMMISSION CONSIDERS DESIRABLE OR, AFTER CONSULTATION WITH THE
25 ATTORNEY GENERAL, THAT THE ATTORNEY GENERAL CONSIDERS DESIRABLE FOR
26 ENFORCEMENT.

27 (D) (1) THE COMMISSION SHALL ESTABLISH FEES UNDER THIS SECTION
28 SUFFICIENT TO COVER THE COSTS OF IMPLEMENTING, MAINTAINING, AND
29 ADMINISTERING THE DATABASE.

30 (2) THE COMMISSION MAY NOT CHARGE A FEE TO A RESIDENTIAL
31 SUBSCRIBER FOR LISTING THE SUBSCRIBER IN THE DATABASE OR FOR RENEWING
32 THE SUBSCRIBER'S LISTING.

33 (E) (1) A PERSON WHO INTENDS TO MAKE A TELEPHONE SOLICITATION TO
34 A RESIDENTIAL SUBSCRIBER IN THE STATE SHALL PURCHASE THE LATEST UPDATED
35 VERSION OF THE DATABASE FROM THE COMMISSION.

36 (2) IF THE PERSON INTENDS TO MAKE TELEPHONE SOLICITATIONS ON
37 BEHALF OF MORE THAN ONE CLIENT, THE PERSON MUST PURCHASE A SEPARATE
38 COPY OF THE DATABASE FOR EACH CLIENT.

1 (F) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE ANY TELEPHONE
2 SOLICITATION TO A TELEPHONE NUMBER THAT IS LISTED ON THE LATEST UPDATED
3 VERSION OF THE DATABASE.

4 (G) A PERSON MAY USE INFORMATION CONTAINED IN THE DATABASE AND
5 INFORMATION USED TO CREATE AND OPERATE THE DATABASE ONLY:

6 (1) TO COMPLY WITH THIS SECTION; OR

7 (2) IN A PROCEEDING OR ACTION TO ENFORCE THIS SECTION.

8 (H) IN CONDUCTING TELEPHONE SOLICITATIONS, THE USE OF AN
9 AUTOMATED DIALING, PUSH-BUTTON, OR TONE-ACTIVATED DEVICE THAT
10 OPERATES SEQUENTIALLY OR IN A MANNER SO THAT THE USER IS OTHERWISE
11 UNABLE TO AVOID CONTACTING TELEPHONE NUMBERS IN THE RESIDENTIAL
12 SUBSCRIBER DATABASE IS PRIMA FACIE EVIDENCE OF AN INTENTION TO VIOLATE
13 THIS SECTION.

14 (I) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF
15 SUBSECTION (F) OR (G) OF THIS SECTION MAY BRING AN ACTION IN A COURT OF
16 COMPETENT JURISDICTION AGAINST THE PERSON MAKING THE TELEPHONE
17 SOLICITATION OR THE PERSON ON WHOSE BEHALF THE SOLICITATION WAS MADE
18 TO RECOVER:

19 (1) THE GREATER OF:

20 (I) LIQUIDATED DAMAGES OF \$1,000; OR

21 (II) ACTUAL DAMAGES; AND

22 (2) REASONABLE ATTORNEY'S FEES.

23 (J) A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (F) OR (G) OF
24 THIS SECTION AFTER THE LATER OF:

25 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF
26 THE ALLEGED VIOLATION OF SUBSECTION (F) OR (G) OF THIS SECTION; OR

27 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION
28 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION
29 FOR AN ALLEGED VIOLATION OF SUBSECTION (F) OR (G) OF THIS SECTION.

30 (K) A DEFENDANT MAY ASSERT AN AFFIRMATIVE DEFENSE IN ANY ACTION OR
31 PROCEEDING BROUGHT UNDER SUBSECTION (I) OF THIS SECTION OR § 14-2206 OF
32 THIS SUBTITLE THAT THE DEFENDANT HAS ESTABLISHED AND IMPLEMENTED
33 REASONABLE PRACTICES AND PROCEDURES EFFECTIVELY TO PREVENT TELEPHONE
34 SOLICITATIONS IN VIOLATION OF THIS SECTION IF THE DEFENDANT:

35 (1) HAS ESTABLISHED AND IMPLEMENTED THOSE PRACTICES AND
36 PROCEDURES WITH DUE CARE;

1 (2) HAS TRAINED ITS PERSONNEL, AND EACH PERSON ASSISTING IN
2 COMPLIANCE, IN THOSE PRACTICES AND PROCEDURES AND HAS TAKEN
3 REASONABLE STEPS TO ENSURE THAT THE PRACTICES AND PROCEDURES ARE
4 FOLLOWED; AND

5 (3) MAINTAINS RECORDS DOCUMENTING THE IMPLEMENTATION AND
6 TRAINING UNDER ITEMS (1) AND (2) OF THIS SUBSECTION.

7 (L) IF THE FEDERAL GOVERNMENT ESTABLISHES A NATIONAL DATABASE OF
8 TELEPHONE NUMBERS OF RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING
9 TELEPHONE SOLICITATIONS, THE COMMISSION SHALL INCLUDE INFORMATION IN
10 THE NATIONAL DATABASE THAT RELATES TO THE INFORMATION KEPT IN THE
11 MARYLAND DATABASE ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION.

12 (M) IF THE COMMISSION, IN CONSULTATION WITH THE OFFICE OF THE
13 ATTORNEY GENERAL, FINDS THAT THE FEDERAL GOVERNMENT HAS ESTABLISHED A
14 PROGRAM THAT IS IN EFFECT AND AFFORDS MARYLAND RESIDENTIAL SUBSCRIBERS
15 PROTECTION EQUAL TO OR GREATER THAN THAT AFFORDED UNDER THIS SECTION,
16 THE COMMISSION SHALL:

17 (1) REPORT THE FINDING TO THE GOVERNOR AND, SUBJECT TO § 2-1246
18 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY; AND

19 (2) ALLOW COMPLIANCE WITH THE FEDERAL PROGRAM TO BE DEEMED
20 COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION FOR SO LONG AS THE
21 COMMISSION'S FINDING REMAINS IN EFFECT.

22 14-2206.

23 IN ADDITION TO ANY REMEDIES OTHERWISE AVAILABLE AT LAW, A VIOLATION
24 OF THIS SUBTITLE SHALL BE:

25 (1) AN UNFAIR AND DECEPTIVE TRADE PRACTICE UNDER TITLE 13,
26 SUBTITLE 3 OF THIS ARTICLE; AND

27 (2) IF THE VIOLATION INVOLVES A SOLICITATION OFFERING CREDIT
28 SERVICES, A VIOLATION OF THE MARYLAND CREDIT SERVICES BUSINESSES ACT,
29 UNDER TITLE 14, SUBTITLE 19 OF THIS ARTICLE.

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Public Service
31 Commission shall report to the Senate Finance Committee and the House
32 Environmental Matters Committee on or before:

33 (1) November 1, 2003, on the status of the development of the database
34 created under this Act; and

35 (2) November 1, 2004, on the status of the implementation of the
36 database.

1 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the Attorney
2 General shall report to the Senate Finance Committee and the House Economic
3 Matters Committee on or before November 1, 2004, on the status of enforcement of
4 the provisions of this Act.

5 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2003.